

Assembly Bill No. 1325

CHAPTER 368

An act to amend, repeal, and add Sections 17913, 17916, 17922, 17923, 17927, and 17929 of the Business and Professions Code, relating to business filings.

[Approved by Governor September 19, 2012. Filed with
Secretary of State September 19, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1325, Lara. Business filings: fictitious business name statements.

Existing law requires a person transacting business in the state under a fictitious name, as defined, to file, with the county clerk of the county where the business is located, a statement including specified information and to declare that the information is true and correct. Under existing law, a registrant who declares as true information that the registrant knows to be false, or otherwise executes, files, or publishes any statement under these provisions, knowing that the statement is false, is guilty of a misdemeanor punishable by a fine not to exceed \$1,000.

This bill would, beginning January 1, 2014, specify on the filing form that a registrant who declares to be true any material matter knowing it to be false is guilty of a misdemeanor punishable by that penalty. The bill would require a registrant or an agent filing on behalf of a registrant to present a California driver's license or other personal government identification acceptable to the county clerk to adequately determine the registrant's or agent's identity, as specified. The bill would authorize the county clerk to require the registrant to complete and sign an affidavit of identity statement on a form prescribed by the county clerk, and would authorize the county clerk to require an agent submitting the filings on behalf of a registrant to also complete and sign an affidavit of identity statement declaring that the registrant has authorized the agent to make the filings on behalf of the registrant. The bill would also require a registrant that is a corporation, limited liability company, or limited liability partnership, and that is required by the county clerk to file an affidavit of identity statement, to submit with its affidavit a certificate of status issued by the Secretary of State certifying to that business entity's existence and good standing. The bill would also make conforming changes.

Because this bill would require an additional level of service from a county clerk's office, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

*

at ** _____:

This business is conducted by ****

The registrant commenced to transact business under the fictitious business name or names listed above on

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime).

Signed

Statement filed with the County Clerk of ____ County on _____

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address and under the same ownership may be listed on one statement.

(2) Where the two asterisks (**) appear in the form: If the registrant has a place of business in this state, insert the street address, and county, of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address, and county, of his or her principal place of business outside this state.

(3) Where the three asterisks (***) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrants are a married couple, insert the full name and residence address of both parties to the marriage. If the registrant is a general partnership, copartnership, joint venture, limited liability partnership, or unincorporated association other than a partnership, insert the full name and residence address of each general partner. If the registrant is a limited partnership, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name and address of the limited liability company, as set out in its articles of organization on file with the California Secretary of State, and the state of organization. If the registrant is a trust, insert the full name and residence address of each trustee. If the registrant is a corporation, insert the name and address of the corporation, as set out in its articles of incorporation on file with the California Secretary of State, and the state of incorporation. If the registrants are state or local registered domestic partners, insert the full name and residence address of each domestic partner.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) “an individual,” (ii) “a general partnership,” (iii) “a limited partnership,” (iv) “a limited liability company,” (v) “an unincorporated association other than a partnership,” (vi) “a corporation,” (vii) “a trust,” (viii) “copartners,” (ix) “married couple” (x) “joint venture,” (xi) “state or local registered domestic partners,” or (xii) “a limited liability partnership.”

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, “Not applicable.”

(c) The registrant shall declare that all of the information in the statement is true and correct. A registrant who declares as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 17913 is added to the Business and Professions Code, to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

*

at ** _____:

This business is conducted by **** _____

The registrant commenced to transact business under the fictitious business name or names listed above on

I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)

Registrant signature _____

Statement filed with the County Clerk of ____ County on _____

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address and under the same ownership may be listed on one statement.

(2) Where the two asterisks (**) appear in the form: If the registrant has a place of business in this state, insert the street address, and county, of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address, and county, of his or her principal place of business outside this state.

(3) Where the three asterisks (***) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrants are a married couple, insert the full name and residence address of both parties to the marriage. If the registrant is a general partnership, copartnership, joint venture, limited liability partnership, or unincorporated association other than a partnership, insert the full name and residence address of each general partner. If the registrant is a limited partnership, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name and address of the limited liability company, as set out in its articles of organization on file with the California Secretary of State, and the state of organization. If the registrant is a trust, insert the full name and residence address of each trustee. If the registrant is a corporation, insert the name and address of the corporation, as set out in its articles of incorporation on file with the California Secretary of State, and the state of incorporation. If the registrants are state or local registered domestic partners, insert the full name and residence address of each domestic partner.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) “an individual,” (ii) “a general partnership,” (iii) “a limited partnership,” (iv) “a limited liability company,” (v) “an unincorporated association other than a partnership,” (vi) “a corporation,” (vii) “a trust,” (viii) “copartners,” (ix) “a married couple,” (x) “joint venture,” (xi) “state or local registered domestic partners,” or (xii) “a limited liability partnership.”

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, “Not applicable.”

(c) The registrant shall declare that all of the information in the statement is true and correct. A registrant who declares as true any material matter pursuant to this section that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).

(d) At the time of filing of the fictitious business name statement, the registrant or agent filing on behalf of the registrant shall present personal identification in the form of a California driver’s license or other government identification acceptable to the county clerk to adequately determine the identity of the registrant or agent filing on behalf of the registrant as provided in subdivision (e) and the county clerk may require the registrant to complete and sign an affidavit of identity statement. In the case of a registrant utilizing

an agent for submission of the registrant's fictitious business name statement for filing, the county clerk may also require the agent to complete and sign an affidavit of identity statement declaring the registrant has authorized the agent to submit the filing on behalf of the registrant.

(e) If the registrant is a corporation, a limited liability company, or a limited liability partnership, an original certificate of status issued by the Secretary of State certifying the current existence and good standing of that business entity shall be deemed acceptable and shall be attached to a completed affidavit of identity statement, if required by the county clerk, for purposes of subdivision (d).

(f) The county clerk may require a registrant that mails a fictitious business name statement to a county clerk's office for filing to submit a completed and notarized affidavit of identity statement. A registrant that is a corporation, limited liability company, or limited liability partnership, if required by the county clerk to submit an affidavit of identity statement, shall also submit an original certificate of status issued by the Secretary of State certifying the current existence and good standing of that business entity.

(g) A county clerk that chooses to establish procedures pursuant to this section shall prescribe the form of affidavit of identity statement for filing by a registrant or its agent in that county.

(h) This section shall become operative on January 1, 2014.

SEC. 3. Section 17916 of the Business and Professions Code is amended to read:

17916. (a) Presentation for filing of a fictitious business name statement, signed by the registrant, and one copy, accompanied by a display of personal identification in accordance with Section 17913, tender of the filing fee, and acceptance of the statement by the county clerk constitute filing under this chapter. The county clerk shall note on the copy the file number, the date of filing the original, and the date of expiration and shall certify and deliver or send the copy to the registrant.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. Section 17916 is added to the Business and Professions Code, to read:

17916. (a) Presentation for filing of an original fictitious business name statement and one copy of the statement, with proper identification, accompanied by a completed affidavit of identity statement, if required by the county clerk, and other documents required in accordance with Section 17913, payment of the filing fee, and acceptance of the statement by the county clerk constitute filing under this chapter. The county clerk shall note on the copy the file number, the date of filing the original, and the date of expiration and shall certify and deliver the copy to the registrant or the registrant's agent.

(b) This section shall become operative on January 1, 2014.

SEC. 5. Section 17922 of the Business and Professions Code is amended to read:

17922. (a) Upon ceasing to transact business in this state under a fictitious business name that was filed in the previous five years, a person who has filed a fictitious business name statement shall file a statement of abandonment of use of fictitious business name. The statement shall be executed in the same manner as a fictitious business name statement and shall be filed with the county clerk of the county in which the person has filed his or her fictitious business name statement. The statement shall be published in the same manner as a fictitious business name statement and an affidavit showing its publication shall be filed with the county clerk after the completion of publication.

(b) The statement shall include:

(1) The name being abandoned and the street address of the principal place of business.

(2) The date on which the fictitious business name statement relating to the fictitious business name being abandoned was filed, the file number, and the county where filed.

(3) In the case of an individual, the full name and residence address of the individual.

(4) In the case of a married couple, the full name and residence address of both parties to the marriage.

(5) In the case of a general partnership, a limited partnership, copartners, a limited liability partnership, a joint venture, or an unincorporated association other than a partnership, the full names and residence addresses of all of the general partners.

(6) In the case of a corporation, the name and address of the corporation as set forth in its articles of incorporation on file with the California Secretary of State.

(7) In the case of a trust, the full name and residence address of each of the trustees.

(8) In the case of a limited liability company, the name and address of the limited liability company as set forth in its articles of organization on file with the California Secretary of State.

(9) In the case of state or local registered domestic partners, the full name and residence address of each domestic partner.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 6. Section 17922 is added to the Business and Professions Code, to read:

17922. (a) Upon ceasing to transact business in this state under a fictitious business name that was filed in the previous five years, a registrant who has filed a fictitious business name statement shall file a statement of abandonment of use of fictitious business name. The statement of abandonment shall be executed in the same manner as a fictitious business name statement, excluding the requirements of subdivisions (d), (e), and (f)

of Section 17913 and shall be filed with the county clerk of the county in which the registrant has filed the fictitious business name statement. The statement shall be published in the same manner as a fictitious business name statement and an affidavit showing its publication shall be filed with the county clerk after the completion of publication.

(b) The statement shall include:

(1) The name being abandoned and the street address of the principal place of business.

(2) The date on which the fictitious business name statement relating to the fictitious business name being abandoned was filed, the file number, and the county where filed.

(3) In the case of an individual, the full name and residence address of the individual.

(4) In the case of a married couple, the full name and residence address of both parties to the marriage.

(5) In the case of a general partnership, a limited partnership, copartners, a limited liability partnership, a joint venture, or an unincorporated association other than a partnership, the full names and residence addresses of all of the general partners.

(6) In the case of a corporation, the name and address of the corporation as set forth in its articles of incorporation on file with the California Secretary of State.

(7) In the case of a trust, the full name and residence address of each of the trustees.

(8) In the case of a limited liability company, the name and address of the limited liability company as set forth in its articles of organization on file with the California Secretary of State.

(9) In the case of state or local registered domestic partners, the full name and residence address of each domestic partner.

(c) This section shall become operative on January 1, 2014.

SEC. 7. Section 17923 of the Business and Professions Code is amended to read:

17923. (a) Any person who is a general partner in a partnership that is or has been regularly transacting business under a fictitious business name may, upon withdrawing as a general partner, file a statement of withdrawal from the partnership operating under a fictitious business name. The statement of withdrawal shall be executed by the person filing the statement in the same manner as a fictitious business name statement and shall be filed with the county clerk of the county where the partnership filed its fictitious business name statement.

(b) The statement shall include:

(1) The fictitious business name of the partnership.

(2) The date on which the fictitious business name statement for the partnership was filed, the file number, and the county where filed.

(3) The street address of its principal place of business in this state or, if it has no place of business in this state, the street address of its principal place of business outside this state, if any.

(4) The full names and residence addresses of the person or persons withdrawing as partners.

(c) The statement of withdrawal from the partnership operating under a fictitious business name shall be published in the same manner as the fictitious business name statement and an affidavit showing the publication of the statement shall be filed with the county clerk after the completion of the publication.

(d) The withdrawal of a general partner does not cause a fictitious business name statement to expire if the withdrawing partner files a statement of withdrawal meeting the requirements of this section.

(e) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 8. Section 17923 is added to the Business and Professions Code, to read:

17923. (a) Any registrant who is a general partner in a partnership that is or has been regularly transacting business under a fictitious business name may, upon withdrawing as a general partner, file a statement of withdrawal from the partnership operating under a fictitious business name. The statement of withdrawal shall be executed by the registrant filing the statement in the same manner as a fictitious business name statement, excluding the requirements of subdivisions (d), (e), and (f) of Section 17913, and shall be filed with the county clerk of the county where the partnership filed its fictitious business name statement.

(b) The statement shall include:

(1) The fictitious business name of the partnership.

(2) The date on which the fictitious business name statement for the partnership was filed, the file number, and the county where filed.

(3) The street address of its principal place of business in this state or, if it has no place of business in this state, the street address of its principal place of business outside this state, if any.

(4) The full names and residence addresses of the registrant or registrants withdrawing as partners.

(c) The statement of withdrawal from the partnership operating under a fictitious business name shall be published in the same manner as the fictitious business name statement and an affidavit showing the publication of the statement shall be filed with the county clerk after the completion of the publication.

(d) The withdrawal of a general partner does not cause a fictitious business name statement to expire if the withdrawing partner files a statement of withdrawal meeting the requirements of this section.

(e) This section shall become operative on January 1, 2014.

SEC. 9. Section 17927 of the Business and Professions Code is amended to read:

17927. (a) The county clerk shall mark each fictitious business name statement with a file number and the date of filing and shall retain the original statement for his or her file. He or she may destroy or otherwise

dispose of the statement, including proof of publication and any other references related to the fictitious business name statement, four years after the statement expires.

(b) The county clerk shall mark each statement of abandonment of use of fictitious business name or statement of withdrawal from partnership operating under fictitious business name with a file number and the date of filing. He or she may destroy or otherwise dispose of the statement at the same time the fictitious business name statement to which it relates is destroyed pursuant to subdivision (a).

(c) In lieu of retaining the original statement on file, the county clerk may retain a copy of the statement in accordance with Section 26205.1 of the Government Code.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 10. Section 17927 is added to the Business and Professions Code, to read:

17927. (a) The county clerk shall mark each fictitious business name statement with a file number and the date of filing and shall retain the original statement for his or her file. He or she may destroy or otherwise dispose of the statement, including proof of publication, affidavit of identity statement, the additional documents required by subdivisions (d), (e), and (f) of Section 17913, and any other references related to the fictitious business name statement, four years after the statement expires.

(b) The county clerk shall mark each statement of abandonment of use of fictitious business name or statement of withdrawal from partnership operating under fictitious business name with a file number and the date of filing. He or she may destroy or otherwise dispose of the statement at the same time the fictitious business name statement to which it relates is destroyed pursuant to subdivision (a).

(c) In lieu of retaining the original statement, proof of publication, affidavit of identity statement, and additional documents that may be required pursuant to subdivisions (d), (e), and (f) of Section 17913, and any other documents pertaining to the fictitious business statement on file, the county clerk may retain a copy of the statement in accordance with Section 26205.1 of the Government Code.

(d) This section shall become operative on January 1, 2014.

SEC. 11. Section 17929 of the Business and Professions Code is amended to read:

17929. (a) The fee for filing a fictitious business name statement is ten dollars (\$10) for the first fictitious business name and owner and two dollars (\$2) for each additional fictitious business name or owner filed on the same statement and doing business at the same location. This fee covers the cost of filing and indexing the statement (and any affidavit of publication), the cost of furnishing one certified copy of the statement to the person filing the statement, and the cost for notifying registrants of the pending expiration of their fictitious business name statement.

(b) The fee for filing a statement of abandonment of use of a fictitious business name is five dollars (\$5). This fee covers the cost of filing and indexing the statement, the cost of any affidavit of publication, and the cost of furnishing one certified copy of the statement to the person filing the statement.

(c) The fee for filing a statement of withdrawal from partnership operating under a fictitious business name is five dollars (\$5). This fee covers the cost of filing and indexing the statement, the cost of any affidavit of publication, and the cost of furnishing one certified copy of the statement to the person filing the statement.

(d) All of the provisions of this section are subject to Section 54985 of the Government Code.

(e) If the notice of pending expiration, as described in subdivision (a), is returned to the county clerk by the United States Postal Service as undeliverable, the county clerk is not required to retain the returned notice of pending expiration.

(f) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 12. Section 17929 is added to the Business and Professions Code, to read:

17929. (a) The fee for filing a fictitious business name statement is ten dollars (\$10) for the first fictitious business name and owner and two dollars (\$2) for each additional fictitious business name or owner filed on the same statement and doing business at the same location. This fee covers the cost of filing and indexing the statement (and any affidavit of publication), the cost of furnishing one certified copy of the statement to the registrant filing the statement, acceptance, verification, and maintenance of the affidavit of identity statement and other documents or actions that may be required pursuant to subdivisions (d), (e), and (f) of Section 17913, and the cost for notifying registrants of the pending expiration of their fictitious business name statement.

(b) The fee for filing a statement of abandonment of use of a fictitious business name is five dollars (\$5). This fee covers the cost of filing and indexing the statement, the cost of any affidavit of publication, and the cost of furnishing one certified copy of the statement to the registrant filing the statement.

(c) The fee for filing a statement of withdrawal from partnership operating under a fictitious business name is five dollars (\$5). This fee covers the cost of filing and indexing the statement, the cost of any affidavit of publication, and the cost of furnishing one certified copy of the statement to the registrant filing the statement.

(d) All of the provisions of this section are subject to Section 54985 of the Government Code.

(e) If the notice of pending expiration, as described in subdivision (a), is returned to the county clerk by the United States Postal Service as

undeliverable, the county clerk is not required to retain the returned notice of pending expiration.

(f) This section shall become operative on January 1, 2014.

SEC. 13. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.